Safe Development Alms Trust vs the State of Kerala Represented by Chief Secretary

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Court : Kerala

Decided On : Jun-15-2023

Judge : Honourable Mrs. Justice Anu Sivaraman

Appeal No. : WP(C)/1237/2017

Appellant : Safe Development Alms Trust

Respondent : The State of Kerala Represented by Chief Secretary

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN THURSDAY, THE 15TH DAY OF JUNE 2023 / 25TH JYAISHTA, 1945 WP(C) NO. 1237 OF 2017 PETITIONER: SAFE DEVELOPMENT ALMS TRUST KARUNA HOSPITAL CAMPUS, MELMURI,PALLIPPURAM P.O., PALAKKAD, REPRESENTED BY ITS MANAGING TRUSTEE CUM CHAIRMAN,P.V.MOHAMMED ARIF, S/O. LATE P.V.HASSAN. BY ADVS. SRI.P.CHANDRASEKHAR SRI.K.ARJUN VENUGOPAL SMT.V.A.HARITHA SMT.MARY RESHMA GEORGE SMT.P.M.MAZNA MANSOOR SRI.SOORAJ T.ELENJICKAL SMT.SANDHYA R.NAIR

RESPONDENTS:

1 THE STATE OF KERALA REPRESENTED BY CHIEF SECRETARY GOVERNMENT OF KERALA, SECRETARIAT,THIRUVANANTHAPURAM - 695 001. 2 THE DISTRICT COLLECTOR PALAKKAD - 678 001. 3 THE DEPUTY TAHSILDAR (REVENUE RECOVERY) CHITTUR, PALAKKAD DISTRICT - 678 101. 4 THE SECRETARY PERUMATTY GRAMA PANCHAYATH,PERUMATTY P.O., PALAKKAD DISTRICT,PIN - 680 686. 5 PERUMATTY GRAMA PANCHAYATH REPRESENTED BY ITS SECRETARY,PERUMATTY P.O., PALAKKAD DISTRICT,PIN - 680 686. 6 THE VILLAGE OFFICER PERUMATTY, PALAKKAD DISTRICT - 680 686. BY ADV. SRI.NIRMAL.S., STANDING COUNSEL, PERUMATTY GRAMA PANCHAYAT

SMT.RESMITHA R CHANDRAN-GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANU SIVARAMAN, J.

======================== W.P.(C) No.1237 of 2017 ======================== Dated this the 15th day of June, 2023

JUDGMENT

This writ petition is filed seeking the following reliefs:

i) Declare that Section 207(1)(b) of the Kerala Panchayat Raj Act, 1994 in as much as it excludes buildings exclusively used for educational purposes and owned by unaided educational institutions recognized by Government from exemption from property tax while exempting similar buildings owned by similarly situated aided educational institutions and institutions receiving Government fund from property tax is ultra vires of

Constitution of India, null, void and inoperative; ii) Declare that the petitioner is not liable to pay property tax in respect of its buildings exclusively used for educational purposes; iii) Call for the records leading to Exhibit- P 15 and quash the same by issuing a Writ of Certiorari;

2. Heard the learned counsel for the petitioner and the learned Government Pleader as well as the learned counsel appearing for respondents 4 and 5.

3. It is submitted by the learned counsel for the

petitioner that the petitioner is a Charitable Trust which conducts a Medical College within the jurisdiction of the 5 th respondent Panchayat. It is submitted that the petitioner had constructed several buildings in the premises belonging to the petitioner on the strength of permission granted to start a Medical College, which is granted in the year 2006 as evidenced by Exhibit P2. It is contended by the learned counsel for the petitioner that the Kerala Panchayat Building Rules had been made applicable to the Panchayat only in the year 2011 and that the petitioner had been carrying out constructions and had been assigned building numbers by the Panchayat in respect of several buildings constructed before the Rules became applicable. It is contended that thereafter also, certain constructions had been effected over buildings already in existence.

4. The petitioner has produced certificates issued by

the respondents with regard to the requirement of permissions to construct buildings in the Panchayat, No objection certificates and certificates showing that Building Rules had not been enforced in the Panchayat. It is submitted that in respect of the buildings in the cases of which regular numbers had been granted and were subject to assessment, the petitioner was paying property tax to the Panchayat as evidenced by Ext.P8 series of receipts. It is submitted that while so, Ext.P9 letter was issued by the Panchayat to the petitioner stating that the buildings owned by the petitioner, numbering 48 buildings were unauthorized buildings and demanded tax at the enhanced rate as unauthorized.

5. It is submitted that the petitioner has submitted

Ext.P10 detailed reply pointing out that several of the buildings had already been numbered and that the petitioner was paying regular tax without fail in respect of such buildings. It is contended that in respect of the other buildings as well, the petitioner had submitted applications for regularization which were not considered.

6. It is stated by the learned counsel for the

petitioner that without considering Ext.P10 objections and without passing an order on the objection submitted by the petitioner, demands are being raised for exorbitant amounts of tax without taking into consideration the specific contention of the petitioner that most of the buildings had been constructed before the Building Rules were brought into effect in the Panchayat and that even in case of the other buildings applications for regularization has been preferred.

7. A counter affidavit is filed by the 4th respondent

stating that the petitioner had earlier approached this Court filing W.P.(C) No.1932 of 2012 and the said writ petition had been disposed of by Ext.R4(a) judgment. The contention of the petitioner that the further constructions made on existing buildings did not require any building permit was not accepted by this Court, since the Building Rules had by that time being made applicable to the Panchayat. The respondents were, therefore, required to take a final decision on the applications submitted by the petitioner for building permit or for regularization as the case may be.

8. It is further contended that all the due procedure

for assessment of property tax had been duly followed by the respondents. It is also contended that the claim of the petitioner that the buildings are entitled to exemption cannot be accepted since it is only in respect of specified buildings which come within the strict ambit of Section 207(1)(b) of the Kerala Panchayat Raj Act that exemption would be applicable.

9. The learned counsel for the respondents would

also place reliance on a judgment of this Court dated 15.11.2019 in W.P.(C) No.18185 of 2019 and connected cases. The contention of the petitioner with regard to the claim under Section 207(1)(b) in respect of Unaided Educational Institutions stands covered against the petitioner.

10. Having considered the contentions advanced, I

notice that Ext.P9 is a notice requiring the petitioner to show cause why the assessment to property tax of the petitioner's buildings under Section 235(AA) treating them as unauthorised building shall not be finalized.

11. The petitioner has submitted Ext.P10 detailed

reply. It is submitted by the learned counsel for the petitioner that the petitioner is in possession of the documents showing that several of the building included in the list of 48 buildings appended to Ext.P9 are actually buildings with regular numbers assigned by the Panchayat. It is further contended that in the case of other buildings also, the petitioner has raised specific contentions in Ext.P10 reply which are liable to be considered by the respondent and an order has to be passed after hearing the petitioner also and without such procedure being followed, the demand raised which is not supported by a proper order of the assessment is incompetent.

12. Having considered the contentions advanced and

in view of the fact that Ext.P9 has been duly answered to by the petitioner by Ext.P10 and since no orders considering the objections have been passed by the respondents, I am of the opinion that the demand raised as per the impugned notices are untenable and unsustainable. In the above view of the matter, demands, if any, raised in terms of Ext.P9 shall stand set aside. The petitioner shall continue to pay property tax in respect of the buildings as was being paid by him as evidenced by Exhibit P8 series at the rates which are applicable at present. The respondents shall consider Exhibit P10 objection raised by the petitioner, with the 5th petitioner on notice, hear him and consider the material that he has produced in support of his contentions. Thereafter, an

order shall be passed after considering the contentions of

the petitioner as well, as also taking note of the numbering of the buildings as contended by the petitioner. Appropriate

order shall be passed within a period of two months from

the date of receipt of a copy of this judgment. The demand of property tax shall, thereafter, be raised, specifically, in accordance with law and in accordance with the orders so passed as directed. Sd/- ANU SIVARAMAN JUDGE SSK/15/06 APPENDIX OF WP(C) 1237/2017 PETITIONER'S EXHIBITS EXHIBIT P1 TRUE COPY OF THE TRUST DEED DATED 20.1.1993 OF THE PETITIONER. EXHIBIT P2 TRUE COPY OF THE LETTER DATED 20.9.2006 OF THE GOVERNMENT OF INDIA PERMITTING THE PETITIONER TO START KARUNA MEDICAL COLLEGE AT PALAKKAD. EXHIBIT P3 TRUE COPY OF THE LETTER DATED 21.5.2012 OF

THE MEDICAL COUNCIL OF INDIA GRANTING RECGONITION/APPROVAL FOR AWARD OF MBBS DEGREE TO KARUNA MEDICAL COLLEGE, PALAKKAD WITH AN ANNUAL INTAKE OF 100 MBBS SEATS PER YEAR. EXHIBIT P4 TRUE COPY OF THE MINIMUM STANDARD REQUIREMENTS FOR 100 M.B.B.S ADMISSION ANNUALLY REGULATIONS, 1999, FRAMED BY THE MEDICAL COUNCIL OF INDIA UNDER SECTION 33 OF THE INDIAN MEDICAL COUNCIL ACT, 1956. EXHIBIT P5 TRUE COPY OF THE NO OBJECTION CERTIFICATE GRANTED BY THE SECRETARY OF 5TH RESPONDNET DATED ON 31.5.2005. EXHIBIT P6 TRUE COPY OF THE CERTIFICATE DATED 29.8.2001.

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EXHIBIT P7          TRUE COPY OF THE PERMIT DATED 18.6.2009.EXHIB
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24.10.2013 IN FAVOUR OF THE 5TH RESPONDENT. EXHIBIT P12 TRUE COPY OF LETTER DATED 02.12.2013 OF THE PETITIONER TO THE 5TH RESPONDENT. EXHIBIT P13 TRUE COPY OF THE LETTER DATED 31.10.2013. EXHIBIT P14 TRUE COPY OF THE RECEIPT DATED 31.8.2016 ISSUED BY THE 5TH RESPONDENT FOR PAYMENT OF PROPERTY TAX UP

TO THE YEAR 2016-2017. EXHIBIT P15 TRUE COPY OF THE NOTICE BEARING TALUK FILE NO. 2016/5496/9/601 DATED 22.11.2016 OF THE 3RD RESPONDENT. EXHIBIT P16 TRUE COPY OF THE ORDER IN WPC NO.25703/2016. RESPONDENTS' EXHIBITS EXHIBIT R4(A) TRUE COPY OF THE JUDGMENT IN W.P.C.1932/2012 EXHIBIT R4(B) TRUE COPY OF THE LETTER NO.A3-7915/11 DATED 06.03.2012.

EXHIBIT R4(C)   TRUE COPY OF THE LETTER DATED 16.03.2012EXH

18.10.2013 EXHIBIT R4(F) TRUE COPY OF THE LETTER DATED 21.01.2015 EXHIBIT R4(G) TRUE COPY OF THE LETTER NO.2628/RB1/2015/LSGD DT.16.02.2015 EXHIBIT R4(H) TRUE COPY OF THE LETTER DATED 15.06.2015 EXHIBIT R4(I) TRUE COPY OF THE ORDER NO.A3-7915/11 DT.05.09.2016 EXHIBIT R4(J) TRUE COPY OF THE DEMAND NOTICE DATED 08.09.2016 EXHIBIT R4(K) TRUE COPY OF THE R R DEMAND NOTICE DATED 07.09.2016